

K4TQrayC

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

20 CR 110 (LJL)
REMOTE VIDEO and
TELECONFERENCE

5 LAWRENCE RAY,

6 Defendant.
7 -----x

8
9 New York, N.Y.
April 29, 2020
10 10:40 a.m.

11 Before:

12 HON. LEWIS J. LIMAN,

13 District Judge

14 APPEARANCES

15 GEOFFREY BERMAN

16 United States Attorney for the
Southern District of New York

17 DANIELLE R. SASSOON (via video)

LINDSEY KEENAN (via telephone)

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant Ray

20 MARNE L. LENOX (via video)

21 PEGGY CROSS-GOLDENBERG (via telephone)

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1 (The Court and all counsel appearing via
2 videoconference or teleconference)

3 THE COURT: Good morning, everybody. This is Judge
4 Liman. Can counsel hear me?

5 (Pause)

6 THE COURT: I apologize for the technological
7 problems. What I wanted to do is take appearances from
8 counsel, first for the government and then for the defendants.

9 MS. SASSOON: Yes. Good morning, your Honor. This is
10 Danielle Sassoon for the United States by video, and my
11 colleague, Lindsey Keenan, is joining by telephone, and we
12 represent the United States.

13 THE COURT: Good morning.

14 MS. LENOX: Good morning, your Honor. For Lawrence
15 Ray, this is Marne Lenox. I am joining by video with my
16 colleague, Peggy Cross-Goldberg, on the phone.

17 THE COURT: Good morning. It is good to see the faces
18 of all of you, and you also, Mr. Ray. And I hope that soon we
19 will be able to see one another in person.

20 As a preliminary matter, I just wanted to be sure I
21 have a sense of defense counsel to proceed today by way of
22 video conference.

23 Ms. Lenox, do you consent on behalf of your client?

24 MS. LENOX: I'm sorry. I don't quite understand; that
25 if the video conference does not continue to work, that we will

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1 proceed by telephone?

2 THE COURT: Correct, and that you are OK proceeding
3 today by way of video.

4 MS. LENOX: Oh, yes. Yes, of course.

5 THE COURT: And I should say that while we can see one
6 another, there is also a feed to the other counsel for the
7 government and to counsel for the defendant, and I believe also
8 to members of the public.

9 So, what I would like to do first is just get a report
10 from the government with respect to the status of discovery in
11 this case, Ms. Sassoon.

12 MS. SASSOON: Yes, your Honor. I'm happy to report
13 that despite the current circumstances, we have been able to
14 make substantial progress with discovery. We have made five
15 productions to date, and those productions have included all of
16 the evidence in this case that was gathered before the
17 defendant's arrest, and that includes the email accounts and
18 all of the iCloud accounts. It also includes some of the
19 electronic discovery seized in the premises search at the time
20 of his (no audio). In addition to that, we are in the process
21 of making another substantial production to defense counsel.

22 We recently requested hard drives amounting to 12
23 terabytes of data that were dropped off by defense counsel
24 yesterday, and now that we have those drives, we will be able
25 to load about 12 terabytes of data that has been successfully

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1 extracted by the FBI despite some of the limitations in their
2 capacity during these times, and that will account for nearly
3 all of the electronic evidence seized in the search warrant.
4 It will take about a week to load, but we will be able to
5 provide that to defense counsel roughly on the date of the
6 discovery deadline originally set here, which was May 6.

7 In addition to that, we have successfully scanned
8 hundreds of pages of paper documents that were seized in the
9 premises search. That scanning was completed several days ago,
10 and so those papers will be included in the next production.

11 And the only items that are still being extracted by
12 the FBI are approximately 19 phones and one Apple tablet. I'm
13 hopeful that that will be extracted soon and produced to
14 defense counsel promptly. The one unknown factor there is that
15 if they are not easily able to bypass the pass code and the
16 security features of the phone, the ability to unlock those
17 phones can take a little bit more time, and I just don't have a
18 status report on that yet.

19 But that's the state of discovery. By approximately
20 May 6, I expect that we will mostly have completed the
21 discovery with the few outstanding items that I mentioned.

22 THE COURT: So, do you have, Ms. Sassoon, an estimate
23 as to when you will be done with the few items that will not be
24 done by May 6?

25 MS. SASSOON: I am waiting for a progress report from

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1 the FBI on whether they have been able to unlock those
2 remaining phones, and I can provide the Court with an update by
3 letter once I get that report. But, again, it's going to
4 depend on whether the phones are readily unlocked or not. If
5 they are easily unlocked, that discovery should be completed in
6 the next couple weeks as long as we get hard drives from the
7 defense counsel.

8 THE COURT: Ms. Lenox, do you agree with what
9 Ms. Sassoon has said with respect to the status of discovery?

10 MS. LENOX: Yes. I just want to make clear there have
11 been the five productions that have been made to date. They
12 total about 2.6 terabytes worth of information, and the
13 outstanding discovery, based on the government's request for
14 drives, amount to 12 terabytes. There is still a substantial
15 amount of discovery outstanding. It seems as though there is
16 at least 80 percent of the discovery that we have not yet
17 received. I understand the government intends to produce most
18 of that within the next couple of weeks, but I just want to
19 make clear that the five productions that have been made so far
20 are dwarfed by what remain in the outstanding discovery.

21 THE COURT: Ms. Lenox, do you have a sense today of
22 what motions you will have to make, if any?

23 MS. LENOX: We do, and we do intend to file motions.
24 As your Honor is aware, the government has represented there
25 was a post arrest statement from Mr. Ray that we will likely

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1 seek to suppress. The search warrant evidence we will likely
2 seek to suppress. We may seek to suppress the cell site
3 evidence as well. We may also file a motion to dismiss one or
4 more of the charges based on a failure to allege an offense.

5 And the government also last week on April 21 made us
6 aware of a post indictment restraining order that they are
7 intending to enter that was signed more than a month ago on
8 March 19, and that would restrict Mr. Ray from accessing his
9 domain accounts under GoDaddy. So, we may lodge a challenge to
10 that order as well.

11 THE COURT: I would like to today set a trial date for
12 the case. I'd like to set a date right before the end of the
13 year. With that in mind, Ms. Lenox, when will you be able to
14 make motions?

15 MS. LENOX: Your Honor, I am not in a position right
16 now to speculate about how long it will take to prepare and
17 file our motions. The reality is that Mr. Ray remains
18 incarcerated. We've asked the government, and they've agreed,
19 to produce all of the non-sensitive materials that have been
20 provided so far to Mr. Ray. That amounts to nearly 2 terabytes
21 worth of data, about 1.6 terabytes, I believe, of non-sensitive
22 disclosure.

23 Mr. Ray, also pursuant to the protective order, needs
24 to review in person with counsel the sensitive discovery in
25 this case. And that largely requires, not only us to be

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present, it requires a computer. The non-sensitive discovery that he needs to review also will require a computer. Much of that discovery cannot actually be printed out. As the government referenced, there are a number of devices and information abstracted from devices, email accounts, and iFile accounts, all of which needs to be reviewed on a computer.

Our understanding right now is that as they are at the MDC, no one is available to review any discovery on a drive. So, while the government is working to provide a drive or multiple drives for Mr. Ray to review while incarcerated, that is (1) just on sensitive discovery, and (2) that is information that he very likely will not be able to review given the conditions at the facility right now.

So, given all of that, and the extraordinary amount of discovery in this case, which constitutes literally millions and millions of pages, hundreds of videos and audio files, I think we are too early in the process for us to be able to provide a date by which we will be able to review the discovery discussed with Mr. Ray, the contents of the discovery and to file motions.

THE COURT: Ms. Lenox, I am sensitive, obviously, to the COVID situation, but also to your client's right to have a speedy trial. Let me ask you if you have a suggestion with respect to how we should proceed, and then I'll turn to Ms. Sassoon.

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1 MS. LENOX: This is Marne Lenox for Mr. Ray.

2 I would suggest setting another conference date in
3 another month or two, both to see where we are with discovery
4 and ensure that it is actually complete by then, and also to
5 get a sense of where things are at the MCC with respect to
6 Mr. Ray's ability to review the discovery in this case.

7 THE COURT: Ms. Sassoon, two questions for you.
8 First, do you have anything that you can report with respect to
9 when the defendant and defense counsel will be able to review
10 the materials at the MCC. And then second, I'm interested in
11 your views with respect to how we should proceed.

12 MS. SASSOON: Yes, your Honor. With respect to
13 reviewing of discovery at the prison, I did tell defense
14 counsel recently at their request that I would provide paper
15 copies of some of the non-sensitive discovery, including all of
16 the warrants, for purposes of Mr. Ray's review. That way he
17 won't be dependent on a hard drive or the law library to be
18 able to review some of the materials.

19 With respect to his ability to meet in person with
20 defense counsel to review sensitive discovery materials, that I
21 don't at this point have an answer to. I think that's going to
22 depend on how things evolve both out of the prison and within
23 the prison in terms of this pandemic, and I don't yet have an
24 answer to that.

25 In light of these unusual circumstances, I have no

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1 objection to defense's request to come back in a month's time
2 given, in particular, their difficulties in consulting with
3 their client. I don't think it will ultimately be necessary to
4 review the entirety of discovery to make a decision about
5 motions. I think they largely have the information that they
6 need and have clearly already assessed any current motions they
7 intend to bring; but given limitations even on meetings with
8 their client and consulting on strategy, I'm comfortable with a
9 conference in a month's time.

10 THE COURT: Ms. Lenox, let me now turn to you.

11 I expect that once jury trials begin, there is going
12 to be a backlog of trials, and this is the case that everybody
13 has represented it takes several weeks to try. With that in
14 mind, I would like to set a trial date for this case. I
15 anticipate somewhat out into the future. We may find a date
16 that would be longer than what I would otherwise schedule in
17 the absence of the COVID crisis. And then what I would propose
18 is that we try to work out motions so that they are filed
19 within that time period, so that they can be decided within
20 that time period.

21 The dates that I have in mind was November 30, with an
22 exclusion of time from today until November 30 in order for you
23 to review discovery, to prepare for trial, to make motions, and
24 to have conversations with your client.

25 Is that acceptable to the defense, or is that too

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1 soon?

2 MS. LENOX: Your Honor, respectfully, I would ask for
3 far more time than that. I think that that number of months
4 between now and November 30 to review discovery, to have
5 conversations with Mr. Ray, for Mr. Ray to review discovery, to
6 file motions, and prepare for trial, I think that is highly,
7 highly unlikely to happen.

8 It seems virtually impossible to me from where I sit
9 today, given that we are at the end of April and this crisis is
10 still ongoing. I think that it makes more sense to come back
11 in a month or two and reevaluate the time frame then when we at
12 least have more information about how this pandemic is
13 evolving.

14 THE COURT: Give me one moment to think about your
15 suggestion.

16 MS. SASSOON: Your Honor, this is Danielle Sassoon for
17 the government.

18 Given the amount of time that you're proposing between
19 now and the trial, which is about seven months, and what you
20 said about a backlog, there is some merit to a placeholder
21 trial date with the possibility of a future adjournment, even
22 if the trial date is not November 30.

23 THE COURT: Ms. Sassoon, that's what I'm thinking, and
24 I'm thinking also of a placeholder date for motions. We can,
25 ostensibly, set that for June depending on what happens with

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1 the crisis. But I do hear defense counsel with respect to
2 November 30 and the volume of the discovery. So let me look at
3 the calendar for a moment.

4 MS. LENOX: Your Honor, before you take a look at the
5 calendar, I just want to say one more thing with respect to the
6 volume of discovery. I asked our IT department to give me a
7 sense of exactly how much discovery we're talking about because
8 when we're talking in terms of terabytes, it's a large amount
9 of discovery, and it's hard to wrap your mind around exactly
10 what that means.

11 The five productions that have been provided so far
12 totals 2.6 terabytes. It consists of 36,800 documents in one
13 set and a page count of over one million for another set. It
14 also includes four iPhones with a report of 230 gigabytes of
15 data, 8 iFile accounts with 500 gigabytes of data, 423 audio
16 files, and 341 video files which are not part of the material
17 that is included on the devices. This is just the 2.6
18 terabytes of discovery that the government has produced to
19 date. They have asked us for drives of 12 more terabytes of
20 discovery and have also indicated on the phone today that in
21 addition to that, there are still 19 more phones outstanding
22 that need to be inspected and to be sourced out.

23 So, all of that said, I just want to make clear just
24 how much discovery we are talking about in this case and how
25 many hours it will take for the defense and for Mr. Ray to

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1 review the discovery notwithstanding Coronavirus, and now on
2 top of that add the protective order and add the pandemic that
3 we're currently in, and the fact that we have not had a chance
4 to have a sit-down conversation with Mr. Ray in well over six
5 weeks.

6 I just want to be very clear about the time frame.
7 While I understand that we're talking about setting placeholder
8 dates, I do believe that it is still early to even be setting
9 placeholder dates considering all of the circumstances in this
10 case.

11 THE COURT: Ms. Sassoon, I'm going to direct you, as I
12 think have before, to identify for the defense, to the extent
13 you are able, the most significant part of that discovery, both
14 what you would anticipate presenting at trial and any material
15 that you believe would be exculpatory. So, I'm going to direct
16 you to assist the defense with respect to that. Is that
17 understood?

18 MS. SASSOON: Yes, your Honor. I mean, there are two
19 phases to how we are doing that. We produced the entirety of
20 the defendant's accounts, his email accounts, his iFile
21 account; but with respect to other victims, we've produced only
22 information that was responsive. So, for example, with the
23 iCloud account, one of the victims, as an example, we did not
24 turn over the entirety of the iCloud search warrant return. We
25 already did a responsive review and only did produce those

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1 videos, messages, audios that we deemed responsive. The same
2 thing for any email accounts that didn't belong to the
3 defendant.

4 And we're in the process of doing similar
5 responsiveness review for the defendant's account now that
6 discovery is nearly complete and will be producing to defense
7 counsel versions of his account that only include the
8 responsive material.

9 But to be clear, the responsive material is still a
10 large amount of data. The amount of emails, for example, in
11 his account that are responsive are going to be very large
12 because any email that he sent to co-conspirators or victims is
13 going to be responsive.

14 Subsequent to that, we will be doing a more refined
15 review for purposes of our preparation for trial in terms of
16 what exhibits we would want introduced or what pieces of
17 evidence we deem the most salient, but we are not far enough
18 along in our review to be able to say that we are on the verge
19 of producing something like that to defense counsel.

20 With respect, for example, to the 12 terabytes of data
21 that has just been extracted, we're producing that data
22 wholesale to defense counsel, having just completed the
23 extraction, but we have yet to review that material except to
24 identify whether it's a responsive phone or drive or not.

25 So, in terms of what we're producing present from the

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1 premises search, we've already eliminated a lot of electronic
2 evidence that is just entirely unresponsive, and we're not
3 producing that. But within the items we are producing, we
4 still have to do a responsiveness review, which will take time.

5 THE COURT: Ms. Sassoon, do you have any sense as to
6 when you will complete your review as to the materials that, in
7 your words, are the most salient?

8 MS. SASSOON: I think the responsiveness review of
9 Mr. Ray's account is going to be complete within the next two
10 months; and with respect to the extracted data, you know, it's
11 difficult for me to say when I myself don't have a copy of the
12 data yet.

13 THE COURT: So, here is what I am going do: I hear
14 Ms. Lenox's point about it being premature to set a trial date
15 today, I think particularly because the government is not able
16 even to give a timetable as to when it will be able to identify
17 the most salient pieces of evidence, and I think we will all
18 have more information in a month's time.

19 So I think there is merit to the notion of moving on
20 before setting a trial date. I'm doing that maybe against my
21 better instincts because I fear that counsel's calendars will
22 become filled in the winter and early next year, but I'm going
23 to go ahead and do it anyway.

24 I would hope to set a trial date at our next
25 conference, and in light of what Ms. Lenox has said, I would

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1 think about doing that sometime in January, so that the trial
2 date would be in January.

3 I do want to set motions, and I recognize that there
4 would be an application from defense counsel to extend the date
5 for motions; and depending on the facts, I very well may grant
6 that, but I think it would be useful to have a control date for
7 motions, and to exclude the time from the date for the motions.
8 So, I'm going to look at my calendar now with respect to that.

9 Ms. Lenox, recognizing that we are now in April, I
10 understand all of the (inaudible) work that you have with
11 respect to reviewing materials, but I would like to set a
12 (inaudible) for applications for the warrant for sometime, I'd
13 like to set a motions date of September 14. Is that acceptable
14 to the defense, recognizing that depending on how things go,
15 you may need to make an application to extend that date?

16 MS. LENOX: September 14?

17 THE COURT: Yes.

18 MS. LENOX: OK.

19 THE COURT: And then the government would have until
20 September -- I'm trying to work with my technology to try and
21 figure out dates. The government would have until the 28th to
22 respond; reply on October 5; and we would keep October 8 as
23 date for any hearing.

24 MS. SASSOON: Two weeks is plenty of time to respond
25 to motions, but I would respectfully request three weeks under

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1 these circumstances. Ms. Lenox identified a number of
2 potential substantial motions, both as to the indictments and
3 as to several search warrants in this case and is now getting
4 numerous months to work on these motions that she has already
5 identified, so we would respectfully ask to have three weeks to
6 respond.

7 THE COURT: That is acceptable. So, October 5 for the
8 reply; opposition October 13 for a reply; and let me ask my
9 deputy if we can schedule a hearing, if necessary, for the
10 afternoon of October 15.

11 MS. LENOX: Your Honor, given the government's
12 representation with respect to how long the response will take
13 to the motions, I would ask for an additional week to reply to
14 the government's response.

15 THE COURT: You can have until the 16th, and then
16 we'll schedule a hearing, it's far enough out, for October 19.

17 Matt, give counsel a time for the afternoon of
18 October 19.

19 LAW CLERK: Yes, 3:00.

20 THE COURT: 3:00 on October 19.

21 And then as to that, I would ask if there's consent to
22 exclude time from today until October 19 under the Speedy Trial
23 Act. Ms Lenox?

24 MS. LENOX: Yes. The defense consents.

25 THE COURT: Ms. Sassoon, is that acceptable to the

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1 government to exclude time?

2 MS. SASSOON: Yes. Thank you, your Honor.

3 THE COURT: OK. So before I set the next conference
4 date, let me enter an Order right now excluding time from today
5 until October 29 under the Speedy Trial Act. I find under 18
6 U.S.C. 3161(h)(7)(A) that the interests of justice outweigh the
7 interest of the public and the defendant in a speedy trial
8 given the huge amount of discovery in this case, the
9 circumstances prevented by the COVID crisis, the need for
10 defense to have time to review that discovery, and to review it
11 with the defendant, and the time necessary to prepare what
12 sounds like a complicated and voluminous set of motions.

13 Is that finding acceptable to the government? Is
14 there anything else I should have said to make the exclusion of
15 time effective, Ms. Sassoon?

16 MS. SASSOON: That was perfect. Thank you, your
17 Honor.

18 THE COURT: Matt, can you give us the time four weeks
19 from today for status conference where we will set a trial
20 date.

21 LAW CLERK: May 29 at 3:00.

22 THE COURT: Is that acceptable to counsel?

23 MS. SASSOON: I just want to clarify. This Danielle
24 Sassoon for the government. If we are going to proceed by
25 video conference, it was my understanding that the conferences

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1 should be in the morning. Perhaps that is no longer the case,
2 but if it is, then perhaps we should have a time in the
3 morning.

4 MS. LENOX: This is Marne Lenox. I have a conference
5 scheduled the morning of the 29th as it is, just so the Court
6 is aware.

7 THE COURT: Let me ask, Ms. Lenox, are you requesting
8 a video conference with your client present or can we simply
9 just establish a conference and would you be willing to waive
10 the presence of your client and to proceed by audio conference?

11 MS. LENOX: I'm not in a position to waive Mr. Ray's
12 appearance at the next status conference. Is there a way for
13 us to meet telephonically and for Mr. Ray to be present on the
14 telephone without having the video component?

15 THE COURT: Let me ask my deputy if he knows the
16 answer to that.

17 DEPUTY CLERK: Was the question all of us having the
18 telephone conference or was it just us on video and Mr. Ray on
19 telephone?

20 MS. LENOX: I would be happy to suspend with the video
21 portion of the conference. I just want to make sure that that
22 wouldn't mean that Mr. Ray was not available to participate by
23 phone.

24 DEPUTY CLERK: No, he would be able to participate by
25 phone as well.

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1 THE COURT: And so, Matt, can we do that in the
2 afternoon then if we're not doing video?

3 DEPUTY CLERK: Yes. From our end, yes, we can. We
4 can do it at any time because we can use our normal
5 teleconference line for that.

6 THE COURT: So, May 29 at 3:00 p.m. Acceptable to
7 everybody?

8 MS. SASSOON: Yes.

9 MS. LENOX: That's fine, your Honor. I will just
10 follow up with the MCC to make sure that they can accommodate
11 that, and I will let the parties and chambers know if they
12 cannot accommodate that request for some reason.

13 THE COURT: That would be very helpful. Thank you.

14 DEPUTY CLERK: If it needs to be through the Court
15 Call, and it needs to stick to the times in the morning that
16 were given by the court, we can also do 12:00 noon on that same
17 day. That's the last time to be able to use the Court Call
18 April.

19 MS. LENOX: That would be fine. I think that's
20 preferable because the afternoon is specifically reserved for
21 counsel calls, and the mornings have been reserved for court
22 appearances. So, I wouldn't want Mr. Ray to take up a place
23 for someone who can otherwise have a call with counsel in the
24 afternoon.

25 THE COURT: Ms. Sassoon, is that acceptable to the

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1 government, May 29 at noon by Court Call?

2 MS. SASSOON: Yes, your Honor.

3 THE COURT: One final matter I have before I ask
4 counsel whether there's anything else I should address. It is
5 incumbent on me to do so, which is to ask counsel for both
6 parties to consider whether under the circumstances they would
7 be prepared to dispense with the jury trial and have this case
8 tried to the Court. I'm loath to even make the suggestion
9 because the defendant has an absolute right to a jury trial,
10 and my suggestion should not be read in any way to put a thumb
11 on the scale with respect to that. If the defense and
12 government want a jury trial, that is what we will have. But
13 as we sit here today, I think everybody is aware that there is
14 uncertainty what will happen with jury trials and how soon or
15 what the circumstances will be like in the winter. And I'm not
16 going to ask anybody to say anything with respect to this now
17 if they don't want to, but I would ask you both to consider the
18 question of a bench trial versus a jury trial.

19 I also would say -- this is directed to Ms. Lenox --
20 that I expect that at the next conference I will be setting a
21 trial date either at the very end of this year or for early
22 next year, so you should keep that in mind.

23 Ms. Sassoon, is there anything from the government's
24 perspective that I should address today?

25 MS. SASSOON: No. Thank you, your Honor.

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1 THE COURT: Ms. Lenox?

2 MS. LENOX: No, nothing further. Thank you.

3 THE COURT: All right. Well, thank you all. Stay
4 safe and healthy everybody, including Mr. Ray, and we will
5 speak in a month's time. Thank you very much.

6 (Adjourned)

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